

**REGULAR STATE BANKING BOARD MEETING
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

July 11, 2013

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Entringer called the meeting to order at 8:59 a.m., Thursday, July 11, 2013.

MEMBERS PRESENT: Robert J. Entringer, Chairman
Nancy Baerwald, Member
Linda Beall, Member
Kim Larson, Member
Anita Quale, Member
Tom Stennes, Member

MEMBER ABSENT: Bill Daniel, Member

ALSO PRESENT: Aaron K. Webb, Secretary
Suzette Richardson, Administrative Staff Officer
Jan Murtha, Assistant Attorney General
Lise Kruse, Chief Examiner – Banks
Angie Mills, Financial Institutions Examiner
Allan Hoberg, Administrative Hearing Officer
Aubrey Zuger, Fredrickson & Byron, P.A., Fargo
Kelly Steffes, T & S Investments
Richard Thoreson, T & S Investments
Thomas J. Archbold, Fargo
Scott Steffes, Fargo
Elizabeth Alvine, Fargo
Dana Ereth, Eide Bailly
Gordon Hoffner, The Union Bank
Wayne Hoffner, The Union Bank

ADMINISTRATIVE HEARING – TRUST COMPANY APPLICATION

Administrative Hearing Officer Hoberg opened the public hearing at 9:00 a.m. in the Conference Room of the Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, regarding the application by Kelly L. Steffes, Richard D. Thoreson, and Thomas Archbold to organize a state-chartered trust company charter in Fargo, to be known as Thoreson Steffes Trust Company.

The hearing closed at 10:10 a.m.

Following a break, Chairman Entringer called the Board into open session at 10:15 a.m.

Assistant Commissioner Webb reviewed his Memorandum dated May 6, 2013, indicating the Department received the trust company application on April 26, 2013.

Assistant Commissioner Webb indicated Richard Thoreson and Kelly Steffes are currently partners in T & S Investments, LLC, a registered investment advisory firm doing business as Thoreson Steffes, and would like to offer trust services to their clients.

Assistant Commissioner Webb indicated per North Dakota Administrative Code Section 13-02-19-04 a notice of hearing was published in *The Fargo Forum* on May 13 and 20, 2013; and a certified copy was mailed to all banks and trust companies located in Cass County.

Assistant Commissioner Webb reviewed the requirements of Section 6-05-01 of the North Dakota Century Code, along with the criteria for approval found under Section 13-02-19-01 of the North Dakota Administrative Code.

Assistant Commissioner Webb indicated the equity capital requirement for organization of a trust company is \$500,000, as found under Section 13-02-19-03 of the North Dakota Administrative Code.

The Board members indicated they were prepared to make a decision regarding the proposed trust company application having heard the evidence presented during the hearing.

Chairman Entringer polled each Board member on the specific criteria found under Section 6-05-01 of the North Dakota Century Code:

- (1) Whether the place where such company is proposed to be located is in need of a further annuity, safe deposit, and trust company.

Member Beall indicated she believes the proposed trust company could fill a niche that is not presently offered in the community. Member Larson indicated because of the obvious growth the company has seen reflects its success and profitability. Member Baerwald added that due to the growth in the area market, the changes in western North Dakota, as well as a need in the Minnesota market warrant the need for this type of trust company. Member Stennes added since existing trust companies have not protested this application, they do not feel they will be harmed by the establishment of the proposed trust company. Member Quale agreed with all previous comments. Chairman Entringer also agreed, adding he feels there is a need for the type of services proposed, and have demonstrated the interest of present as well as future clients.

- (2) Whether the proposed institution is adapted to the filling of such need.

Member Baerwald stated the applicants have years of experience, expertise and education, with a willingness to continue that education, to fulfill the needs of present and future clients. Members Larson, Stennes, Beall, Quale, and Chairman Entringer agreed with Member Baerwald's statement.

- (3) Whether the proposed incorporators are possessed of such character, integrity, reputation, and financial standing as shown by a detailed financial statement to be furnished by them, that their connection with the company will be beneficial to the public welfare of the community in which such company is proposed to be established.

Member Larson stated it appears the applicants meet the requirements to support the proposed trust company. Members Stennes, Baerwald, and Beall agreed. Member Quale questioned whether she could ask a question regarding the financial statement, and Chairman Entringer indicated the meeting would have to go into closed session. When questioned by Member Quale if the minimal capital has been met, Ms. Zuger replied the

capital is a contribution of \$500,000 for the first two years, and an initial \$85,000 will be met immediately through a separate account. Chairman Entringer indicated the statutory requirement under Section 6-05-03 of the North Dakota Century Code is that a minimum of \$50,000 must be injected immediately into the proposed trust company. Chairman Entringer indicated he agrees with Board member comments; however, stated he is requesting financial statements from the four incorporators that have not yet provided them; adding this would be a requirement contained in the Order.

Chairman Entringer asked if the applicants would commit to continue their training in the area of trust and investment services. Ms. Steffes indicated she anticipates increased training.

Assistant Attorney General Murtha added the motion should indicate approval will be subject to further information required in the Order which would be presented to the Board for approval at a later date.

Dana Ereth, Gordon Hoffner, and Wayne Hoffner joined the meeting at 10:20 a.m.

It was moved by Member Larson, seconded by Member Beall, and carried by a vote of 6 to 0, with Member Daniel absent, to approve the application by Kelly L. Steffes, Richard D. Thoreson, and Thomas J. Archbold to organize a state-chartered company charter in Fargo, North Dakota, subject to approval of further information required in the Order to be presented to the Board for approval at a later date.

Administrative Hearing Officer Hoberg and all individuals representing the above-listed trust company application left the meeting at 10:28 a.m.

Following a break, the meeting resumed at 10:33 a.m. in open session.

MERGER APPLICATION – THE UNION BANK, BEULAH; CHANGE OF CONTROL APPLICATION – UNION HOLDING COMPANY, HALLIDAY; DIVIDEND REQUEST – THE UNION BANK, BEULAH

Chairman Entringer indicated the Department received four applications: (1) The Union Holding Company, Halliday, to acquire 100% of the shares of First Wilton Bancshares, Ltd., Wilton; (2) The Union Bank, Beulah, to merge First State Bank of Wilton into The Union Bank, Beulah, and to establish a facility in Wilton and (3) Dividend request of First State Bank of Wilton; and (4) Redemption of subordinated debentures issued by The Union Bank, Beulah, to The Union Holding Company, Halliday.

Assistant Commissioner Webb reviewed his Memorandum dated May 20, 2013, indicating the Department received the applications on May 17, 2013.

Assistant Commissioner Webb indicated the Union Holding Company, Halliday, is requesting permission to acquire 100% of the shares of First Wilton Bancshares, Ltd., Wilton. Assistant Commissioner Webb indicated this change of control application is made in connection with the simultaneous acquisition and merger of First Wilton Bancshares, Ltd., into The Union Holding Company, and First State Bank of Wilton into The Union Bank, Beulah.

Assistant Commissioner Webb indicated the Department published notice of the change of control application on June 6, 2013, in the *McLean County Independent*.

Assistant Commissioner Webb indicated the Department recommends approval of the change of control application.

Dividend

Assistant Commissioner Webb indicated First State Bank of Wilton is requesting approval to declare and pay a liquidating distribution not to exceed \$1 million in connection with the merger transaction. Assistant Commissioner Webb reviewed the criteria set forth in Section 6-08-08.1(4) of the North Dakota Century Code.

Merger

Assistant Commissioner Webb indicated notice of the merger application was published pursuant to the joint state and federal requirements in the *McLean County Independent* and *Hazen Star* on May 16, 23, and 30, 2013, with the comment period ending June 15, 2013. Assistant Commissioner Webb indicated no comments were received nor were there any requests for copies of the application.

Assistant Commissioner Webb reviewed Section 6-03-11 of the North Dakota Century Code and Chapter 13-02-13 of the North Dakota Administrative Code.

Assistant Commissioner Webb indicated a Joint Written Action of Shareholders and Directors of Union Holding Company (as sole shareholder of The Union Bank) and a Joint Written Action of Shareholders and Directors of First Wilton Bancshares, Ltd. (as sole shareholder of First State Bank of Wilton) were included within the application materials and that all shareholders consented and authorized the merger transaction. Assistant Commissioner Webb indicated documents providing ratification from Union Holding Company and First Wilton Bancshares, Ltd., for the execution of the Articles of Merger and Plan of Merger were also included in the application.

Assistant Commissioner Webb indicated the resultant bank is projecting to remain in the “well capitalized” capital category, will continue to offer full banking services similar to those currently provided, and the proposed officers are qualified, experienced, and financially responsible.

Assistant Commissioner Webb indicated per Section 6-03-13.3 of the North Dakota Century Code, The Union Bank intends to continue operations in the former main office in Wilton and the facility located in Wing.

Change of Control

Mr. Ereth indicated a sole shareholder, Jim Porter, is selling 100% of his stock in First Wilton Bancshares, Ltd. to The Union Holding Company, Halliday. Mr. Ereth indicated that the change of control would occur simultaneously with the merger of the holding companies and banks.

Mr. Ereth indicated the Federal Deposit Insurance Corporation approved the applications on June 24, 2013, subject to a 15-day waiting period for the Department of Justice to complete an anti-trust review.

Mr. Ereth indicated issues regarding the change of control application of the holding companies are currently being resolved with the Federal Reserve Bank of Minneapolis.

Mr. Ereth indicated Jim Porter will be retiring; therefore, interested merger parties were sought last fall, with The Union Holding Company, Halliday, emerging as the winner of the bid process. Mr. Ereth indicated The Union Holding Company expressed interest in simultaneously merging the holding companies and banks.

Mr. Ereth indicated all requirements of Section 13-02-13-02 of the North Dakota Administrative Code have been met, and also pointed out that 12-year projections were provided as part of a strategic plan for The Union Holding Company.

Mr. Ereth indicated the geographical area that will be covered by the resultant bank is Halliday, Beulah, Hazen, Wilton, and Wing.

Wayne Hoffner, President of The Union Bank, indicated no service changes will result from the merger; pointing out that First State Bank of Wilton presently offers credit cards and The Union Bank does not; however, the credit cards will continue for the Wilton customers and possibly be offered to customers of The Union Bank.

President Hoffner indicated current leases First State Bank of Wilton has with Bismarck customers will be retained.

President Hoffner indicated The Union Bank will assume 100% of the employees and management of First State Bank of Wilton, with the exception of President Jim Porter. President Hoffner explained these individuals will remain at the facility in Wilton, and a member of The Union Bank management team will be at the facility location three to four days per week for the first six months following the merger. President Hoffner indicated Cary Anderson, Vice President of First State Bank of Wilton, will be added to the Board of Directors of The Union Bank to provide representation from the Wilton facility.

When asked by Chairman Entringer if Cary Anderson would be the manager of the Wilton facility, President Hoffner indicated that is correct.

President Hoffner added that an Advisory Board will be developed for the Wilton area, as there is an Advisory Board in Beulah.

Merger

Mr. Ereth indicated all criteria have been met regarding the proposed merger application.

Mr. Ereth explained both banks to be merged are owned 100% by parent holding companies, and 100% approval by both buyer and seller holding companies for the merger of the banks.

Mr. Ereth indicated the Hoffner family represents approximately 72% of the stock; however, there will be issuance of additional common stock following the merger.

Mr. Ereth indicated Tier 1 capital will remain over 8% throughout the 12-year projection period. Mr. Ereth explained the growth projections outlined in the application are aggressive; adding he believes the projected net income for the merged institution is very conservative.

Mr. Ereth indicated First State Bank of Wilton has been a high performing Corporation bank for many years and nationally recognized for return on assets; therefore, capabilities for growth potential for earnings in the western part of the state has been understated in the application.

Mr. Ereth indicated both banks are currently rated satisfactory for CRA purposes, which is a major part of the FDIC application; therefore, he sees no concerns with meeting the community needs.

Mr. Ereth indicated with the retirement of Jim Porter, as well as Gordon Hoffner, the depth of management will increase due to younger personnel in the merged institution.

Mr. Ereth stated that within a week of submitting the merger application to the FDIC it was determined complete, with no requests for additional information or conditions placed on the approval.

Member Stennes questioned the push down accounting that was addressed in the application. Mr. Ereth explained the FDIC approval letter addressed fair value accounting which is a major issue, as in any other business there is a goodwill factor with the premium associated with the transaction that would stay at the entity acquisition level (holding company). Mr. Ereth continued that for regulatory accounting purposes the premium associated with the transaction have to be pushed down to the bank level; adding the loan portfolio at First State Bank of Wilton will have to be fair valued.

Mr. Ereth stated the numbers projected in the application were updated on June 30, 2013, and following the proposed dividend from the selling institution the projections are: Tier 1 capital 8.1%; Tier 1 risk-based capital 11.3%; and total risk based capital 12.18%. Mr. Ereth indicated with the projections as of June 30, 2013, the dividend request has changed from \$850,000 to \$845,000.

It was moved by Member Baerwald, seconded by Member Beall, and carried by a vote of 6 to 0, with Member Daniel absent, to approve the request by First State Bank of Wilton, Wilton, to declare and pay a liquidating distribution in an amount not to exceed \$1,000,000, for the purpose of facilitating the sale of the bank holding company, First Wilton Bancshares, Ltd., Wilton, to Union Holding Company, Halliday.

It was moved by Member Larson, seconded by Member Quale, and carried by a vote of 6 to 0, with Member Daniel absent, to approve the change of control application by Union Holding Company, Halliday, to acquire and merge First Wilton Bancshares, Ltd., Wilton.

It was moved by Member Stennes, seconded by Member Beall, and carried by a vote of 6 to 0, with Member Daniel absent to approve the application by The Union Bank, Beulah, to merge First State Bank of Wilton, Wilton, into The Union Bank, Beulah, and establish a branch in Wilton and Wing.

Gordon Hoffner made comments regarding his banking history, and indicated he has transferred all his holding company shares to an Irrevocable Family Trust.

Mr. Hoffner continued that he will invest \$400,000 in order to purchase common stock that will be used as payment to Jim Porter.

Mr. Ereth, Gordon Hoffner, and Wayne Hoffner thanked the Board, and left the meeting at 11:16.

APPROVAL OF MINUTES

Chairman Entringer indicated the Board received copies of the minutes of the regular meeting held on May 30, 2013, and special meetings held June 5, 2013, and June 26, 2013.

It was moved by Member Quale, seconded by Member Stennes, and unanimously carried to approve the minutes of the regular meeting held May 30, 2013, and the minutes of the special meetings held June 5, 2013, and June 26, 2013, as presented.

Following a break, the Board returned to open session at 11:25 a.m.

Blake Nelson, SVP/Controller for Bell State Bank & Trust, Fargo, joined the meeting by conference call at 11:25 a.m.

MERGER APPLICATION – BELL STATE BANK & TRUST, FARGO

Chairman Entringer reviewed his Memorandum dated July 2, 2013, indicating the Department received the Interagency Bank Merger Act Application by Bell State Bank & Trust, Fargo, North Dakota, to merge The Business Bank, Minnetonka, Minnesota, into Bell State Bank & Trust, Fargo, North Dakota.

Chairman Entringer indicated notice of the application was published pursuant to the joint state and federal requirements in the *Star Tribune*, Minneapolis, MN, on June 3, 16, and 28, 2013, and in the *Fargo Forum*, Fargo, ND, on June 3, 10, and 24, 2013. Chairman Entringer indicated the comment period

ended July 3, 2013, and no comments were received nor were there any requests for copies of the application.

Chairman Entringer reviewed Section 6-03-11 of the North Dakota Century Code, and Chapter 13-02-13 of the North Dakota Administrative Code.

Chairman Entringer indicated the Plan of Reorganization and Merger Agreement, Waiver of Notice of Special Meeting of the Shareholders of Bell State Bank & Trust, Minutes of Special Meeting of the Shareholders of Bell State Bank & Trust, and Resolutions by the Board of Directors of both Bell State Bank & Trust and The Business Bank are included in the application.

Chairman Entringer indicated the projected capital of the resultant bank on a pro forma basis as of March 31, 2013, included in the application materials, shows the resultant bank will remain in the well capitalized category.

Chairman Entringer indicated the applicant bank plans to continue to provide exceptional customer service and offer competitive rates to the existing customers within The Business Bank.

Chairman Entringer indicated the Department did not receive any information that would indicate the proposed officers are not qualified, experienced or financially responsible; adding that the applicant bank is well run and highly rated.

Chairman Entringer indicated the applicant bank intends to continue operations at the existing location of The Business Bank, as well as at the existing 14 loan production offices as listed in the application.

SVP Nelson informed the Board that the LPO located at 3001 Tamiami Trail North, Suite 204, Naples, FL, has been closed; therefore, Bell State Bank & Trust will retain 13 LPOs.

In response to a question by Chairman Entringer, SVP Nelson indicated Bell State Bank & Trust purchased approximately 32 LPOs in MN whose relationships were primarily with REMAX offices, of which one loan officer rents office space.

Chairman Entringer explained that the LPOs generate real estate loans for Bell State Bank & Trust.

Chairman Entringer indicated the Department did not conduct an examination of The Business Bank; however, requested a copy of the FDIC's most recent Safety and Soundness Report of Examination, Compliance Report of Examination, and Community Reinvestment Act Performance Evaluation. Chairman Entringer added the Department has no concerns regarding the condition of The Business Bank.

Chairman Entringer indicated the Department believes assumptions used and projections provided in the application are accurate, and would recommend that the merger application be approved.

Chairman Entringer reviewed the proposed Order for SVP Nelson.

It was moved by Member Baerwald, seconded by Member Beall, and carried by a vote of 6 to 0, with Member Daniel absent, to approve the application by Bell State Bank & Trust, Fargo, North Dakota, to merge The Business Bank, Minnetonka, Minnesota, into Bell State Bank & Trust, and to establish an interstate branch at 11100 Wayzata Boulevard, Suite 150, Minnetonka, Minnesota.

SVP Nelson left the conference call at 11:33 a.m.

CHANGE OF CONTROL APPLICATION – SARAH M. GETZLAFF

Chairman Entringer reviewed his Memorandum dated July 2, 2013, indicating the Department received a change of control application on May 23, 2013, from Sarah M. Getzlaff to acquire 9% of the voting shares of Oliver Bancorporation, Inc. Chairman Entringer indicated this is a retroactive application as Ms. Getzlaff has already acquired 9% of the voting shares.

Chairman Entringer indicated the Interagency Notice of Change in Control application was deemed complete on June 24, 2013, and published pursuant to Section 13-02-17-01 of the North Dakota Administrative Code in the *Center Republican* on May 23, 2013. The comment period ended June 12, 2013, and no comments or any requests for copies of the application were received.

Chairman Entringer reviewed the application criteria pursuant to Section 6-08-08.1(4) of the North Dakota Century Code.

Chairman Entringer indicated as a result of the transaction Ms. Getzlaff is able to act in concert with her parents James and Devon Goetz and therefore considered to be a control person which necessitates a change in control. Chairman Entringer indicated there is no change in the Board of Directors or Senior Management; adding that Ms. Getzlaff has been EVP/COO of Security First Bank of North Dakota since 2005, and a member of the Board of Directors of both Oliver Bancorporation, Inc. and the subsidiary bank, Security First Bank of North Dakota, since 2002.

Member Larson indicated it is noted once in both the Interagency Notice of Change in Control and Personal Financial Statement for Ms. Getzlaff that she owns 5% of Oliver Bancorporation, Inc. and questioned whether it should be stated as 9%. Chairman Entringer stated Ms. Getzlaff calculated her ownership based on the total outstanding voting and non-voting shares; therefore, the 9% is correct based on voting shares.

Chairman Entringer indicated based on the statutory criteria, the Department recommends approval of the change of control application by Sarah M. Getzlaff to acquire 9% of the voting shares of Oliver Bancorporation, Inc.

It was moved by Member Larson, seconded by Member Stennes, and carried by a vote of 6 to 0, with Member Daniel absent, to approve the change of control application by Sarah M. Getzlaff to acquire 9% of the voting shares of Oliver Bancorporation, Inc.

CHANGE OF CONTROL APPLICATION – COMMERCIAL BANK OF MOTT EMPLOYEE STOCK OWNERSHIP PLAN

Chairman Entringer reviewed his Memorandum dated July 3, 2013, indicating the Department received the application for change of control for Jeri Haberstroh as Trustee/Administrator and Charlotte Aldinger as Trustee/Administrator of Commercial Bank of Mott Employee Stock Ownership Plan, a qualified employee benefit plan (“ESOP”) on June 20, 2013.

Chairman Entringer indicated the application was deemed complete on July 3, 2013; published jointly with the Federal Reserve Bank of Minneapolis pursuant to Section 13-02-17-01 of the North Dakota Administrative Code in *The Dickinson*

Press on June 20, 2013; and the comment period ended July 10, 2013. No comments or requests for copies of the application were received.

Chairman Entringer reviewed the application criteria pursuant to Section 6-08-08.1(4) of the North Dakota Century Code.

Chairman Entringer indicated the applicants (Jeri Haberstroh and Charlotte Aldinger) were appointed as trustees of the ESOP on January 1, 2013, by the Board of Directors of the Commercial Bank of Mott. Chairman Entringer indicated the ESOP controls 55% of the outstanding stock of the bank and since the trustees/administrators vote this 55% ownership of the ESOP, a change in the trustees necessitates an application for change of control.

Chairman Entringer indicated Ms. Aldinger has been employed as EVP/CFO at the bank since September 2012, as well as employed as a New Business Development/Transition Manager with Investment Centers of America for seven years. Chairman Entringer indicated Ms. Haberstroh is a Loan Officer/VP at the bank and been employed with the bank since 1993.

Chairman Entringer indicated based on the statutory criterion the Department recommends approval of the application for change of control for Jeri Haberstroh as Trustee/Administrator and Charlotte Aldinger as Trustee/Administrator of Commercial Bank of Mott Employee Stock Ownership Plan, a qualified employee benefit plan ("ESOP").

It was moved by Member Beall, seconded by Member Baerwald, and carried by a vote of 6 to 0, with Member Daniel absent, to approve the application for change of control for Jeri Haberstroh as Trustee/Administrator and Charlotte Aldinger as Trustee/Administrator of Commercial Bank of Mott Employee Stock Ownership Plan, a qualified employee benefit plan ("ESOP").

BANK BUDGET UPDATE

The May 31, 2013, Organizational Status Report by Summary Account for the bank division was included with the agenda for the Board's review.

CSBS ACCREDITATION

Chairman Entringer informed the Board the CSBS Accreditation Team was on-site Monday, July 8, and Tuesday, July 9, 2013, and is very proud to announce that the Department will be reaccredited. Chairman Entringer stated he believes due to the efforts of staff, the Department received the highest score of any accreditation/reaccreditation application.

Chairman Entringer indicated the Accreditation Team has suggested the members of both the State Banking Board and State Credit Union Board sign confidentiality agreements because they review the reports of examination. Chairman Entringer indicated the Department will draft a confidentiality agreement to be signed by each Board member, and which will become a part of the new Board member packet.

The Board went into closed session at 11:44 a.m. to review the Supervisory Reports of Examination pursuant to North Dakota Century Code 6-01-07.1, and reconvened to open session at 11:55 a.m.

ADMINISTRATIVE RULE – CAPITAL LEVEL FOR TRUST COMPANIES

When asked by Member Stennes if the Department has an administrative rule regarding capital levels for trust companies, Chairman Entringer indicated there is not; adding the Department has considered basing it on fiduciary assets, whether discretionary or non-discretionary. Chairman Entringer indicated some other states have rules which he would like to review.

Chairman Entringer indicated he has received another phone call from an individual interested in chartering a state-chartered trust company in North Dakota.

Chairman Entringer indicated the Department staff will be reviewing administrative rules in the near future, namely Chapter 13-02-19, Trust Companies.

Chairman Entringer indicated another issue of concern is that the requirement for trust companies to have a \$500,000 bond is not enough compared to the amount of fiduciary assets currently held by trust companies.

Chairman Entringer concluded that the Department will contact the state-chartered trust company representatives to discuss possible administrative rules, as well as a possible legislative bill to change the bond requirement. Chairman Entringer added if the bond requirement changes for trust companies it will also change for trust departments within state banks.

The meeting adjourned at 12:02 p.m.

Robert J. Entringer, Chairman

Aaron K. Webb, Secretary